ALHAJI SEKOU TARAWALLAY, Appellant, *v.* ALPHONSO MOMO KAWAH, by and through his guardian, M. BORMA K. ELLIS, Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued October 27, 1969. Decided January 30, 1970.

1. The signature approving the appeal bond must be that of the trial judge, and in the event of his unavailability, it should be deposited in a post office, addressed to him, within ten days after final judgment, to constitute timeliness under the statute.
2. The signature of any judge on an appeal bond other than the judge before whom the matter was heard, renders the appeal bond defective and the appeal, therefore, subject to dismissal.
3. Trivial technicalitities not going to the merits of a case, are frowned upon by the Supreme Court as bases for drastic relief.

In the absence of counsel for petitioners in an action for specific performance, the trial court rendered judgment for respondents. The case had been duly assigned, and counsel for both sides had been notified, but on the day scheduled for legal argument petitioner's counsel sent a letter to the trial judge stating that he had forgotten about the hearing until that afternoon. Petitioner appealed from the decree dismissing his petition and the appellees moved to dismiss the appeal on the ground that the appeal bond was defective, in that it bore the signature of a judge other than the one before whom the matter was heard. Appellant contended the trial judge had left the county immediately after the Chamber Session had ended, and, in the circumstances, the signature of another judge of the same court was sufficient to constitute the appeal bond duly approved. *Motion granted, appeal dismissed.*

Michael Johnson for appellant. *Philip L. Brumskine* for appellee.

MR. JUSTICE WARDSWORTH delivered the opinion of the court.

The above-entitled cause was instituted in the Sixth Judicial Circuit Court for Montserrado County, on July 11, 1966. The case was duly assigned for disposition of the issues of law and despite the fact that counsel for the parties were duly notified of the assignment of the case for disposition of the issues of law, counsel for petitioner failed to appear, but on February 12, 1969, dispatched a letter to the trial judge in which he stated, according to the trial judge's decree that: "I forgot all about the assignment until this afternoon."

Having failed to heed the assignment, petitioner's counsel was not present when the issues of law were disposed of, which resulted in the respondent only producing evidence. The court denied the petition.

Petitioner took an appeal and a motion to dismiss was made by appellees on the ground that a judge other than the trial judge approved the appeal bond to which appellant replied by citing the absence of the trial judge, who had left for another county at the end of the Chamber Session.

Appeal procedure dictates that it is the duty of any party desiring to appeal to submit his bill of exceptions to the trial judge for approval within ten days after final judgment and should the judge have left his circuit, proof that it is deposited within a post office of this Republic within ten days will be sufficient evidence of its having been submitted within time. *Adorkor* v. *Adorkor*, 5 L.L.R. 172 (1936).

The principal contention of appellee is to the effect that appellant's appeal is defective, in that the trial judge's signature in approval of the bond is not affixed thereto, as the statute requires in that the case was tried and determined by Judge John A. Dennis, but Judge Roderick N. Lewis approved the appeal bond.

"He shall file with the clerk of the court the bill of exceptions signed by the judge and an appeal bond approved by the judge." Criminal Procedure Law, 1956 Code 8:383(d).

This Court, in *Adorkor* v. *Adorkor, supra*, held, at p. 175:

"Passing on to count two of the motion, since the issue set forth and contained therein has not been specifically passed upon by this Court we are glad of the opportunity of doing so now; as we have said above, the statute law governing appeals, as found in the Acts of the Legislature approved January 13, 1894, requires the performance of certain prerequisites which must be performed by every person, including appellant, who may desire to take out an appeal to this Court. The said act is mandatory and must be strictly observed and followed by appellants; the relevant part thereof (section 1) reads as follows, to wit: 'Appeal bonds are to be approved by the Court from which the appeal is taken, within sixty days after final judgment. . . .'; the word 'court,' here mentioned, means the trial court, that is the judge of the trial court."

"Every appellant shall give an appeal bond in an amount to be fixed by the court, with two or more legally qualified sureties, to the effect that he will indemnify the appellee from all costs or injury arising from the appeal, if unsuccessful, and that he will comply with the judgment of the appellate court or of any other court to which the case is removed. The appellant shall secure the approval of the bond by the trial judge and shall take it to the clerk of the court within sixty days after rendition of judgment." Civil Procedure Law, 1956 Code, tit. 6, § 1013 (in part).

With regard to the form in closing the three counts of appellee's motion, a mere technicality is involved which does not go to the merits of the case. This Court frowns

upon such trivial technicalities and attaches no legal weight to them, nor will it sustain them as grounds for dismissal of the relief sought.

In view of the foregoing, it is obvious that appellant's appeal bond, not having been approved by the trial judge, is defective and invalid. It is, therefore, our considered opinion that appellee's motion to dismiss the appeal under review should be sustained with costs against appellant. And it is hereby so ordered.

Motion granted; appeal dismissed.